

**REMARKS**

Claims 33-42 remain in this application. Claims 33-42 are rejected. Claims 20-31 are cancelled herein. Claims 33, 35, 37, 38 and 40-42 are amended herein to clarify the invention and to address matters of form unrelated to substantive patentability issues.

Applicants herein traverse and respectfully request reconsideration of the rejection of the claims cited in the above-referenced Office Action.

Claims 33-35, 38-39 and 40-42 are rejected as obvious over Plourde (US 5,457,918) in view of Haldric et al. (US 4,852,380) under 35 U.S.C. §103(a). The applicants herein respectfully traverse this rejection. For a rejection under 35 U.S.C. §103(a) to be sustained, the differences between the features of the combined references and the present invention must be obvious to one skilled in the art.

It is respectfully submitted that a *prima facie* case of obviousness has not been established in the rejection of claims 33-35, 38-39 and 40-42. "To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or

suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on the applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991)." MPEP §706.02(j) "Contents of a 35 U.S.C. §103 Rejection".

Applicants respectfully submit that the proffered combination of references fails to teach or suggest all claimed features, as detailed below.

Independent claims 33 and 35 both contain recitations directed to an anchoring portion which includes a first portion and a second portion each of which are cone shaped and which have cone angles differing from one another. Applicants submit that no such structural configuration is disclosed in the primary Plourde reference. Furthermore, the secondary Haldric et al. reference, offered by the Examiner for teaching generally relating to a hammering process for forming a corrugated tube structure, can offer nothing which adequately supplements the structural disclosure of Plourde.

Contrary to the Examiners averment regarding the alleged teachings of Plourde, the anchoring device disclosed therein is devoid of an anchoring portion which is comprised of two portions which are both conical in shape and which have different cone angles. In support of the rejection, the Examiner states that the device of Plourde includes an "anchoring portion having a first portion (18) and a second portion (14) being formed from one piece; the first portion being cone-shaped with a first cone angle, the second portion being cone-shaped with a second cone angle

different from the first cone angle.” Applicants, however, respectfully traverse this characterization of the disclosure as being inaccurate. A reading of Plourde reveals that while the reference numeral 18 is used to identify “an insertion section,” reference numeral 14 does not designate a second section, but rather “a second longitudinal end.”

Even if it were simply the Examiner’s attention to use the numeral 14, as shown for example in Fig. 1, to indicate another portion of the insertion section 18 located above that to which the numeral 18 points, the structure illustrated and shown still fails to meet the claim limitations. In particular, as clearly shown in the cross-sectional view of Fig. 4 of Pleorde, the section at the upper extent of the threads (corresponding to the region pointed to by numeral 14 in Fig. 1), referred to by the Examiner as being a second cone-shaped portion, is actually cylindrical, having a zero cone angle. There is nothing in the written description which would suggest any other shape than what is shown in the figures.

Moreover, the device of Pleorde, unlike the claimed invention of claims 33 and 35 that recites that the anchoring portion be substantially hollow, also comprises almost completely solid structure over almost the entire length of what has been characterized by the Examiner as being the first portion (i.e., the section of the insertion portion closest to the tip, and said by the Examiner to have a first cone angle).

Therefore, the reference clearly fails to teach or suggest all claim limitations, as properly required for establishing a *prima facie* case of obviousness. In addition, as noted above, Haldric et al. is similarly deficient. Thus, it is respectfully submitted that the rejected claims are not obvious in view of the cited references for the reasons stated above. Reconsideration of the rejection of claims 33-35, 38-39 and 40-42 and their allowance are respectfully requested.

Claims 35-39, 40 and 42 are rejected as obvious over Lesar (US 5,524,855) in view of Haldric et al. (US 4,852,380) under 35 U.S.C. §103(a). The applicants herein respectfully traverse this rejection.

Applicants submit that the proffered combination of prior art reference fails to teach or suggest all the claim limitations as properly required for establishing a *prima facie* case of obviousness.

It is the Examiner's position that Lesar discloses an "anchoring portion having a first portion (22) and a second portion (10, 12, 34, 36) being formed from one piece; the first portion being cone-shaped with a first cone angle, the second portion being cone-shaped with a second cone angle different from the first cone angle." Applicants must once again traverse the Examiners characterization of the prior art disclosure, this time with respect to the cited Lesar reference.

A reading of Lesar reveals that reference numeral 22 refers to a tapered neck which is above a main body, the latter being received below ground during use. As such, tapered neck 22 does not constitute a part of device which is inserted into the

ground, and which could legitimately be termed an “anchoring portion.” Therefore, even though having a cone shape, this tapered neck portion does not meet the claim limitation of independent claim 35, which requires that this conical portion be part of the anchoring portion.

Moreover, even if this tapered portion were to be construed as being a first cone-shaped portion which is part of the anchoring portion, the structure disclosed in Lesar still lacks a second portion of cone shape, as claimed. The reference numerals referred to by the Examiner, i.e., 10, 12, 34, 36, do not identify any structure which could be said to be conical in shape. In particular, reference numeral 10 is pointed in the general direction of the cylindrical main body 12, and the shovel means 34 include arcuate surfaces 36. The cylindrical main body 12 is just that, a cylindrical, not cone, shaped portion. Similarly, the opposed arcuate surfaces 36 could hardly be equated as a presenting a cone shape.

Therefore, the reference clearly fails to teach or suggest all claim limitations as properly required for establishing a *prima facie* case of obviousness. As noted above herein, Haldric et al. similarly fails to provide what is missing in Lesar. Thus, it is respectfully submitted that the rejected claims are not obvious in view of the cited references for the reasons stated above. Reconsideration of the rejection of claims 35-39, 40 and 42 and their allowance are respectfully requested.

Claim 41 is rejected as obvious over Plourde (US 5,457,918) in view of Gerhard (DE 19637985) under 35 U.S.C. §103(a). The applicants herein respectfully traverse this rejection.

Applicants respectfully submit that Gerhard fails to provide what is missing from Plourde, as discussed above with respect to the rejection of claims 33 and 35, from which the rejected claim depends. Thus, the combination of prior art references fails to teach or suggest all the claim limitations. Therefore, reconsideration of the rejection of claim 41 and its allowance are respectfully requested.

Claim 41 is also rejected as obvious over Lesar (US 5,524,855) in view of Gerhard (DE 19637985) under 35 U.S.C. §103(a). The applicants herein respectfully traverse this rejection.

Applicants respectfully submit that Gerhard fails to provide what is missing from Plourde, as discussed above with respect to the rejection of claim 35, from which the rejected claim depends. Thus, the combination of prior art references fails to teach or suggest all the claim limitations. Therefore, reconsideration of the rejection of claim 41 and its allowance are respectfully requested.

In light of the foregoing, the application is now believed to be in proper form for allowance of all claims and notice to that effect is earnestly solicited. Please charge any deficiency or credit any overpayment to Deposit Account No. 10-1250.

Respectfully submitted,  
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